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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/828,798	04/10/2001	Takao Daicho	109146	8412

25944 7590 10/29/2003

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EXAMINER

PATTEN, PATRICIA A

ART UNIT	PAPER NUMBER
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1654

DATE MAILED: 10/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/828,798

Applicant(s)

DAICHO, TAKAO

Examiner

Patricia A Patten

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1654

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 September 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☒ Applicant's reply has overcome the following rejection(s): 35 USC 112 First paragraph.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: Please see 'Addendum to Advisory' attached hereto.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1,3,4,6 and 8.Claim(s) withdrawn from consideration: 7.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Addendum to Advisory Action

As indicated on the PTOL-303 submitted herewith, the amendment filed After Final action has been entered into the case, but does not place the claims in condition for allowance for the following reasons:

Applicants contend that the amounts of cholic acid and isoflavones as recited in claim 1 reflect a synergistic amount which is evidenced by the data presented in the Table on page 10 of the Instant specification (p.5- Arguments). However, there are no amounts given in this Table, and thus, this data is only conclusive insofar as it teaches that the combination of cholic acid and isoflavones are synergistic when combined. Because the prior art taught that soy and cholic acid were present in the animal feed, it must have had these properties as displayed in the Table on page 10 of the Instant specification.

Applicants argue that Mach fails to disclose the Instantly claimed ranges of cholic acid and isoflavones (p. 5- Arguments). This argument is not found convincing, because, as stated in the Final Office action, although Mach did not specifically disclose the claimed amounts of each constituent, these ranges are very broad. Further, it was clearly pointed out that the ordinary artisan would have been motivated to have varied

the amounts of soy and cholic acid in order to provide the animals with varying degrees of nutritional ingredients.

Applicants argue that Mach discloses an animal feed, not intended for human use (p.6 – Arguments). However, Applicants are arguing limitations which are not found in the claims, in that the claims do not make any specific reference to wherein the recipients of the composition are human. It is further noted that the only intended use listed for the composition is 'health food'. It is deemed that because the composition was given as a feed to animals, which offered nutritional value, the animal feed is considered a 'health food'.

Thus, it has not been demonstrated where the particular amounts of cholic acid and isoflavone as recited in the claims has any unexpected result over the animal feed of the prior art. As indicated supra, because these ingredients were known to be used in animal feed, and because the ranges of amounts are claimed so broadly, it is deemed that the ordinary artisan would have had a good expectation that the amounts of cholic acid and isoflavones in the Instantly claimed composition would have been acceptable amounts for animal feed.

It is noted that this rejection may be overcome by limiting the composition to 'consisting of' because this limitation would necessarily exclude the other ingredients

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present in the animal feed. However, any amendment presented After Final may constitute a new search and consideration of the prior art.

Thus, the rejections stand.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia A Patten whose telephone number is (703) 308-1189. The examiner can normally be reached on 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback can be reached on (703) 306-3220. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

10/21/03

Patricia A Patten
Examiner
Art Unit 1654

A handwritten signature in black ink, appearing to read "Patricia A. Patten", with a large, stylized loop at the end.

**PATRICIA PATTEN
PATENT EXAMINER**